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9 Attorneys for Defendant
10 PHOENIX FIBERS, INC.

11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA

13 SWEET PEOPLE APPAREL, INC.
14 D/B/A MISS ME, a California
15 corporation, and RCRV, INC. D/B/A
16 ROCK REVIVAL, a California
17 corporation,

18 Plaintiffs,

19 vs.

20 PHOENIX FIBERS, INC., an Arizona
21 corporation, SAC INTERNATIONAL
22 TRADERS, INC., a California
23 corporation, SHAUKAT ALI CHOCHAN,
24 an individual, COMAK TRADING, INC.,
25 a California corporation, LYDIA
26 EVILSA TERRAZAS CHO, an
27 individual, MYUNG KWON CHO, an
28 individual, XYZ COMPANIES 1-10, and
JOHN AND JANE DOES 1-10,

Defendants.

Case No.: 2:16-cv-00940-TJH-JC

Assigned for All Purposes to:
Hon. Terry J. Hatter Jr.

**DEFENDANT PHOENIX FIBERS,
INC.'S ANSWER TO PLAINTIFFS'
COMPLAINT**

DEMAND FOR JURY TRIAL

1 Defendant Phoenix Fibers, Inc. (“Defendant”) hereby answers the Complaint
2 filed by Plaintiffs Sweet People Apparel, Inc. and RCRV, Inc. (“Plaintiffs”) as
3 follows:
4

5 1. Defendant admits that this Court has jurisdiction over this matter.
6 Except as expressly admitted or alleged herein, Defendant denies each and every
7 allegation of Paragraph 1.
8

9 2. Defendant admits that venue is properly founded in this judicial district.
10 Except as expressly admitted or alleged herein, Defendant denies each and every
11 allegation of Paragraph 2.
12

13 3. Defendant lacks sufficient information upon which to admit or deny the
14 truth of the factual allegations contained in Paragraph 3, and on that basis denies the
15 allegations of said Paragraph.
16

17 4. Defendant lacks any record of any of Defendant’s donated goods being
18 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
19 that basis specifically denies such allegation. Defendant specifically denies that
20 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
21 information upon which to admit or deny the truth of the remaining factual
22 allegations contained in Paragraph 4, and on that basis denies the allegations of said
23 Paragraph.
24

25 5. Defendant lacks any record of any of Defendant’s donated goods being
26 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
27 that basis specifically denies such allegation. Defendant specifically denies that
28

1 Plaintiffs and Defendant had an agreement or contract. Defendant admits that it
2 manufactures and sells shoddy fiber to an affiliate company called Bonded Logic,
3 Inc. as well as other companies. Except as expressly admitted or alleged herein,
4 Defendant denies each and every allegation of Paragraph 5.

5
6 6. Defendant lacks any record of any of Defendant's donated goods being
7 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
8 that basis specifically denies such allegation. Defendant specifically denies that
9 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
10 information upon which to admit or deny the truth of the factual allegations
11 contained in Paragraph 6 against the Retailer Defendants, and on that basis denies the
12 allegations of said Paragraph. Except as expressly admitted or alleged herein,
13 Defendant denies each and every allegation of Paragraph 6.

14
15 7. Defendant lacks sufficient information upon which to admit or deny the
16 truth of the factual allegations contained in Paragraph 7 against the Retailer
17 Defendants, and on that basis denies the allegations of said Paragraph. Except as
18 expressly admitted or alleged herein, Defendant denies each and every allegation of
19 Paragraph 7.

20
21 8. Defendant lacks sufficient information upon which to admit or deny the
22 truth of the factual allegations contained in Paragraph 8, and on that basis denies the
23 allegations of said Paragraph.

24
25 9. Defendant lacks sufficient information upon which to admit or deny the
26 truth of the factual allegations contained in Paragraph 9, and on that basis denies the
27 allegations of said Paragraph.

1
2 10. Defendant admits that Defendant is a corporation duly organized and
3 existing under the laws of the State of Arizona, and maintains its principal place of
4 business located at 400 East Ray Road, Chandler, Arizona 85225.
5

6 11. Defendant lacks sufficient information upon which to admit or deny the
7 truth of the factual allegations contained in Paragraph 11, and on that basis denies the
8 allegations of said Paragraph.
9

10 12. Defendant lacks sufficient information upon which to admit or deny the
11 truth of the factual allegations contained in Paragraph 12, and on that basis denies the
12 allegations of said Paragraph.
13

14 13. Defendant lacks sufficient information upon which to admit or deny the
15 truth of the factual allegations contained in Paragraph 13, and on that basis denies the
16 allegations of said Paragraph.
17

18 14. Defendant lacks sufficient information upon which to admit or deny the
19 truth of the factual allegations contained in Paragraph 14, and on that basis denies the
20 allegations of said Paragraph.
21

22 15. Defendant lacks sufficient information upon which to admit or deny the
23 truth of the additional factual allegations contained in Paragraph 15, and on that basis
24 denies the remaining allegations of said Paragraph.
25

26 16. Defendant lacks sufficient information upon which to admit or deny the
27 truth of the additional factual allegations contained in Paragraph 16, and on that basis
28

1 denies the allegations of said Paragraph.
2

3 17. Defendant lacks sufficient information upon which to admit or deny the
4 truth of the additional factual allegations contained in Paragraph 17, and on that basis
5 denies the allegations of said Paragraph.
6

7 18. Defendant lacks sufficient information upon which to admit or deny the
8 truth of the additional factual allegations contained in Paragraph 18, and on that basis
9 denies the allegations of said Paragraph.
10

11 19. Defendant lacks sufficient information upon which to admit or deny the
12 truth of the additional factual allegations contained in Paragraph 19, and on that basis
13 denies the allegations of said Paragraph.
14

15 20. Defendant lacks sufficient information upon which to admit or deny the
16 truth of the additional factual allegations contained in Paragraph 20, and on that basis
17 denies the allegations of said Paragraph.
18

19 21. Defendant lacks sufficient information upon which to admit or deny the
20 truth of the additional factual allegations contained in Paragraph 21, and on that basis
21 denies the allegations of said Paragraph.
22

23 22. Defendant lacks sufficient information upon which to admit or deny the
24 truth of the additional factual allegations contained in Paragraph 22, and on that basis
25 denies the allegations of said Paragraph.
26

27 23. Defendant lacks sufficient information upon which to admit or deny the
28

1 truth of the additional factual allegations contained in Paragraph 23, and on that basis
2 denies the allegations of said Paragraph.

3
4 24. Defendant lacks sufficient information upon which to admit or deny the
5 truth of the additional factual allegations contained in Paragraph 24, and on that basis
6 denies the allegations of said Paragraph.

7
8 25. To the extent that the paragraph can be read to encompass Defendant's
9 entire business, then Defendant denies such allegation. Defendant admits that
10 Defendant converts pre- and post-consumer denim and other cotton fabric into
11 "shoddy fiber," which is then sold to many different companies. One end-use of
12 such fiber is thermal insulation materials. As noted on Defendant's website, the
13 "items we do not use in our shredding process are resold to other recycling
14 companies." Except as expressly admitted or alleged herein, Defendant denies each
15 and every allegation of Paragraph 25.

16
17 26. To the extent that this paragraph alleges that all denim and cotton
18 clothing and materials received from third parties is converted into shoddy fiber,
19 Defendant denies such allegation. Defendant admits that the majority of the denim
20 collected is converted into shoddy fiber. But, as noted on Defendant's website, the
21 "items we do not use in our shredding process are resold to other recycling
22 companies." Except as expressly admitted or alleged herein, Defendant denies each
23 and every allegation of Paragraph 26.

24
25 27. Defendant notes that the photographs shown in the Complaint are
26 actually stills from a video on the website. To the extent that the paragraph can be
27 construed to mean that the only way Defendant receives materials is by solicitation,
28

1 Defendant denies such allegation. Defendant is unaware of what the term “sister
 2 company” means in the context of this paragraph and denies such allegation on that
 3 basis. Defendant admits that it sells shoddy fiber to Bonded Logic and other
 4 companies. Except as expressly admitted or alleged herein, Defendant denies each
 5 and every allegation of Paragraph 27.

6
 7 28. Defendant lacks sufficient information upon which to admit or deny the
 8 truth of the additional factual allegations contained in Paragraph 28, and on that basis
 9 denies the allegations of said Paragraph.

10
 11 29. Defendant lacks sufficient information upon which to admit or deny the
 12 truth of the additional factual allegations contained in Paragraph 29, and on that basis
 13 denies the allegations of said Paragraph.

14
 15 30. Defendant admits that Plaintiffs donated a wide variety of materials to
 16 Defendant, though Defendant lacks sufficient information to admit or deny the
 17 amount of each type of material (including, for example, backpacks, handbags,
 18 wallets, faux fur products, cutting pattern overlays, plastic hangers, paper, cardboard
 19 and trash) and is not clear what Plaintiffs mean by the use of the term “units” in the
 20 context of such allegation. Defendant specifically denies that Plaintiffs and
 21 Defendant had an agreement or contract. Defendant lacks sufficient information upon
 22 which to admit or deny the truth of the additional factual allegations contained in
 23 Paragraph 30, and on that basis denies the allegations of said Paragraph.

24
 25 31. Defendant admits that Plaintiffs donated materials to Defendant, though
 26 Defendant lacks sufficient information to admit or deny the amount of material and is
 27 not clear what Plaintiffs mean by the use of the term “units” in the context of such
 28

1 allegation. Defendant lacks sufficient information upon which to admit or deny the
 2 truth of the additional factual allegations contained in Paragraph 31, and on that basis
 3 denies the allegations of said Paragraph.

4
 5 32. Defendant lacks any record of any of Defendant's donated goods being
 6 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
 7 that basis specifically denies such allegation. Defendant specifically denies that
 8 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
 9 information upon which to admit or deny the truth of the remaining factual
 10 allegations contained in Paragraph 32, and on that basis denies the allegations of said
 11 Paragraph.

12
 13 33. Defendant lacks sufficient information upon which to admit or deny the
 14 truth of the factual allegations contained in Paragraph 33, and on that basis denies the
 15 allegations of said Paragraph.

16
 17 34. Defendant admits that Plaintiffs' in-house counsel, Lilly Kim, contacted
 18 Defendant's President, Tod Kean, who facilitated a conversation with Steve Johnson.
 19 Defendant lacks sufficient information upon which to admit or deny the truth of the
 20 factual allegations contained in Paragraph 33, and on that basis denies the allegations
 21 of said Paragraph.

22
 23 35. Defendant denies that the conversation between Lilly Kim and Tod
 24 Kean took place after the conversation with Steve Johnson. Defendant does admit
 25 that Tod Kean directed Steve Johnson to sequester Plaintiffs' donated materials into
 26 a secure and monitored cage within Defendant's warehouse. Defendant lacks
 27 sufficient information upon which to admit or deny the truth of the additional factual
 28

1 allegations contained in Paragraph 35, and on that basis denies the allegations of said
2 Paragraph.

3
4 36. Defendant lacks sufficient information upon which to admit or deny the
5 truth of the additional factual allegations contained in Paragraph 36, and on that basis
6 denies the allegations of said Paragraph.

7
8 37. Defendant lacks any record of any of Defendant's donated goods being
9 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
10 that basis specifically denies such allegation. Defendant specifically denies that
11 Plaintiffs and Defendant had an agreement or contract. Defendant admits to receiving
12 a letter from Arnold & Porter, LLP dated November 17, 2015 misdirected to Bonded
13 Logic, Inc., the contents of which speak for themselves. Except as expressly admitted
14 or alleged herein, Defendant denies each and every allegation of Paragraph 37.

15
16 38. Defendant admits that Charles Wirken sent a letter dated December 3,
17 2015 to Louis Ederer of Arnold & Porter LLP on behalf of Defendant, the contents
18 of which speak for themselves. Except as expressly admitted or alleged herein,
19 Defendant denies each and every allegation of Paragraph 38.

20
21 39. Defendant admits that Plaintiffs picked up the materials from the locked
22 area of Defendant's warehouse, but lacks specific information on the amount of each
23 type of material picked up (including, for example, backpacks, handbags, wallets,
24 faux fur products, cutting pattern overlays, plastic hangers, paper, cardboard and
25 trash) or what Plaintiffs mean by the term "units" in the context of these allegations.
26 Defendant lacks sufficient information upon which to admit or deny the truth of the
27 additional factual allegations contained in Paragraph 39, and on that basis denies the
28

1 allegations of said Paragraph.
2

3 40. Defendant lacks sufficient information upon which to admit or deny the
4 truth of the factual allegations contained in Paragraph 40, and on that basis denies the
5 allegations of said Paragraph.
6

7 41. Defendant lacks any record of any of Defendant's donated goods being
8 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
9 that basis specifically denies such allegation. Defendant specifically denies that
10 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
11 information upon which to admit or deny the truth of the additional factual
12 allegations contained in Paragraph 41, and on that basis denies the allegations of said
13 Paragraph.
14

15 42. Defendant lacks any record of any of Defendant's donated goods being
16 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
17 that basis specifically denies such allegation. Defendant specifically denies that
18 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
19 information upon which to admit or deny the truth of the additional factual
20 allegations contained in Paragraph 42, and on that basis denies the allegations of said
21 Paragraph.
22

23 43. Defendant lacks sufficient information upon which to admit or deny the
24 truth of the factual allegations contained in Paragraph 43, and on that basis denies the
25 allegations of said Paragraph.
26

27 44. Defendant lacks sufficient information upon which to admit or deny the
28

1 truth of the factual allegations contained in Paragraph 44, and on that basis denies the
2 allegations of said Paragraph.

3
4 45. Defendant lacks sufficient information upon which to admit or deny the
5 truth of the factual allegations contained in Paragraph 45, and on that basis denies the
6 allegations of said Paragraph.

7
8 46. Defendant lacks any record of any of Defendant's donated goods being
9 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
10 that basis specifically denies such allegation. Defendant lacks sufficient information
11 upon which to admit or deny the truth of the additional factual allegations contained
12 in Paragraph 46, and on that basis denies the allegations of said Paragraph.

13
14 47. Defendant lacks any record of any of Defendant's donated goods being
15 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
16 that basis specifically denies such allegation. Defendant lacks sufficient information
17 upon which to admit or deny the truth of the additional factual allegations contained
18 in Paragraph 47, and on that basis denies the allegations of said Paragraph.

19
20 48. Defendant lacks any record of any of Defendant's donated goods being
21 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
22 that basis specifically denies such allegation. Defendant lacks sufficient information
23 upon which to admit or deny the truth of the additional factual allegations contained
24 in Paragraph 48, and on that basis denies the allegations of said Paragraph.

25
26 49. Defendant lacks any record of any of Defendant's donated goods being
27 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
28

1 that basis specifically denies such allegation. Defendant lacks sufficient information
 2 upon which to admit or deny the truth of the additional factual allegations contained
 3 in Paragraph 49, and on that basis denies the allegations of said Paragraph.
 4

5 50. Defendant lacks any record of any of Defendant's donated goods being
 6 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
 7 that basis specifically denies such allegation. Defendant lacks sufficient information
 8 upon which to admit or deny the truth of the additional factual allegations contained
 9 in Paragraph 50, and on that basis denies the allegations of said Paragraph.
 10

11 51. Defendant incorporates by reference its responses to paragraphs 1
 12 through 50 above.
 13

14 52. Defendant denies each and every allegation of Paragraph 52.
 15

16 53. Defendant denies each and every allegation of Paragraph 53.
 17

18 54. Defendant denies each and every allegation of Paragraph 54.
 19

20 55. Defendant denies each and every allegation of Paragraph 55.
 21

22 56. Defendant denies each and every allegation of Paragraph 56.
 23

24 57. Defendant incorporates by reference its responses to paragraphs 1
 25 through 56 above.
 26

27 58. Defendant lacks any record of any of Defendant's donated goods being
 28

1 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
2 that basis specifically denies such allegation. Defendant specifically denies that
3 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
4 information upon which to admit or deny the truth of the additional factual
5 allegations contained in Paragraph 58, and on that basis denies the allegations of said
6 Paragraph.

7
8 59. Defendant lacks any record of any of Defendant's donated goods being
9 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
10 that basis specifically denies such allegation. Defendant specifically denies that
11 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
12 information upon which to admit or deny the truth of the additional factual
13 allegations contained in Paragraph 59, and on that basis denies the allegations of said
14 Paragraph.

15
16 60. Defendant lacks any record of any of Defendant's donated goods being
17 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
18 that basis specifically denies such allegation. Defendant specifically denies that
19 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
20 information upon which to admit or deny the truth of the additional factual
21 allegations contained in Paragraph 60, and on that basis denies the allegations of said
22 Paragraph.

23
24 61. Defendant lacks any record of any of Defendant's donated goods being
25 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
26 that basis specifically denies such allegation. Defendant specifically denies that
27 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
28

1 information upon which to admit or deny the truth of the additional factual
2 allegations contained in Paragraph 61, and on that basis denies the allegations of said
3 Paragraph.

4
5 62. Defendant lacks any record of any of Defendant's donated goods being
6 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
7 that basis specifically denies such allegation. Defendant specifically denies that
8 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
9 information upon which to admit or deny the truth of the additional factual
10 allegations contained in Paragraph 62, and on that basis denies the allegations of said
11 Paragraph.

12
13 63. Defendant lacks any record of any of Defendant's donated goods being
14 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
15 that basis specifically denies such allegation. Defendant specifically denies that
16 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
17 information upon which to admit or deny the truth of the additional factual
18 allegations contained in Paragraph 63, and on that basis denies the allegations of said
19 Paragraph.

20
21 64. Defendant lacks any record of any of Defendant's donated goods being
22 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
23 that basis specifically denies such allegation. Defendant specifically denies that
24 Plaintiffs and Defendant had an agreement or contract. Defendant denies making any
25 profits or gains from the alleged conduct. Defendant lacks sufficient information
26 upon which to admit or deny the truth of the additional factual allegations contained
27 in Paragraph 64, and on that basis denies the allegations of said Paragraph.

1
2 65. Defendant lacks any record of any of Defendant's donated goods being
3 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
4 that basis specifically denies such allegation. Defendant specifically denies that
5 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
6 information upon which to admit or deny the truth of the additional factual
7 allegations contained in Paragraph 65, and on that basis denies the allegations of said
8 Paragraph.

9
10 66. Defendant incorporates by reference its responses to paragraphs 1
11 through 66 above.

12
13 67. Defendant lacks any record of any of Defendant's donated goods being
14 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
15 that basis specifically denies such allegation. Defendant specifically denies that
16 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
17 information upon which to admit or deny the truth of the additional factual
18 allegations contained in Paragraph 67, and on that basis denies the allegations of said
19 Paragraph.

20
21 68. Defendant lacks any record of any of Defendant's donated goods being
22 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
23 that basis specifically denies such allegation. Defendant specifically denies that
24 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
25 information upon which to admit or deny the truth of the additional factual
26 allegations contained in Paragraph 68, and on that basis denies the allegations of said
27 Paragraph.

1
2 69. Defendant lacks any record of any of Defendant's donated goods being
3 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
4 that basis specifically denies such allegation. Defendant specifically denies that
5 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
6 information upon which to admit or deny the truth of the additional factual
7 allegations contained in Paragraph 69, and on that basis denies the allegations of said
8 Paragraph.

9
10 70. Defendant lacks any record of any of Defendant's donated goods being
11 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
12 that basis specifically denies such allegation. Defendant specifically denies that
13 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
14 information upon which to admit or deny the truth of the additional factual
15 allegations contained in Paragraph 70, and on that basis denies the allegations of said
16 Paragraph.

17
18 71. Defendant lacks any record of any of Defendant's donated goods being
19 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
20 that basis specifically denies such allegation. Defendant specifically denies that
21 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
22 information upon which to admit or deny the truth of the additional factual
23 allegations contained in Paragraph 71, and on that basis denies the allegations of said
24 Paragraph.

25
26 72. Defendant lacks any record of any of Defendant's donated goods being
27 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
28

1 that basis specifically denies such allegation. Defendant specifically denies that
2 Plaintiffs and Defendant had an agreement or contract. Defendant denies making any
3 profits or gains from the alleged conduct. Defendant lacks sufficient information
4 upon which to admit or deny the truth of the additional factual allegations contained
5 in Paragraph 72, and on that basis denies the allegations of said Paragraph.

6
7 73. Defendant lacks any record of any of Defendant's donated goods being
8 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
9 that basis specifically denies such allegation. Defendant specifically denies that
10 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
11 information upon which to admit or deny the truth of the additional factual
12 allegations contained in Paragraph 73, and on that basis denies the allegations of said
13 Paragraph.

14
15 74. Defendant incorporates by reference its responses to paragraphs 1
16 through 74 above.

17
18 75. Defendant lacks any record of any of Defendant's donated goods being
19 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
20 that basis specifically denies such allegation. Defendant specifically denies that
21 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
22 information upon which to admit or deny the truth of the additional factual
23 allegations contained in Paragraph 75, and on that basis denies the allegations of said
24 Paragraph.

25
26 76. Defendant lacks any record of any of Defendant's donated goods being
27 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
28

1 that basis specifically denies such allegation. Defendant specifically denies that
2 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
3 information upon which to admit or deny the truth of the additional factual
4 allegations contained in Paragraph 76, and on that basis denies the allegations of said
5 Paragraph.

6
7 77. Defendant lacks any record of any of Defendant's donated goods being
8 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
9 that basis specifically denies such allegation. Defendant specifically denies that
10 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
11 information upon which to admit or deny the truth of the additional factual
12 allegations contained in Paragraph 77, and on that basis denies the allegations of said
13 Paragraph.

14
15 78. Defendant lacks any record of any of Defendant's donated goods being
16 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
17 that basis specifically denies such allegation. Defendant specifically denies that
18 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
19 information upon which to admit or deny the truth of the additional factual
20 allegations contained in Paragraph 78, and on that basis denies the allegations of said
21 Paragraph.

22
23 79. Defendant lacks any record of any of Defendant's donated goods being
24 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
25 that basis specifically denies such allegation. Defendant specifically denies that
26 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
27 information upon which to admit or deny the truth of the additional factual
28

1 allegations contained in Paragraph 79, and on that basis denies the allegations of said
2 Paragraph.

3
4 80. Defendant incorporates by reference its responses to paragraphs 1
5 through 79 above.

6
7 81. Defendant lacks sufficient information upon which to admit or deny the
8 truth of the factual allegations contained in Paragraph 81, and on that basis denies the
9 allegations of said Paragraph.

10
11 82. Defendant lacks sufficient information upon which to admit or deny the
12 truth of the factual allegations contained in Paragraph 82, and on that basis denies the
13 allegations of said Paragraph.

14
15 83. Defendant lacks any record of any of Defendant's donated goods being
16 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
17 that basis specifically denies such allegation. Defendant specifically denies that
18 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
19 information upon which to admit or deny the truth of the additional factual
20 allegations contained in Paragraph 83, and on that basis denies the allegations of said
21 Paragraph.

22
23 84. Defendant lacks any record of any of Defendant's donated goods being
24 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
25 that basis specifically denies such allegation. Defendant specifically denies that
26 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
27 information upon which to admit or deny the truth of the additional factual
28

1 allegations contained in Paragraph 84, and on that basis denies the allegations of said
2 Paragraph.

3
4 85. Defendant lacks any record of any of Defendant's donated goods being
5 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
6 that basis specifically denies such allegation. Defendant specifically denies that
7 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
8 information upon which to admit or deny the truth of the additional factual
9 allegations contained in Paragraph 85, and on that basis denies the allegations of said
10 Paragraph.

11
12 86. Defendant lacks any record of any of Defendant's donated goods being
13 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
14 that basis specifically denies such allegation. Defendant specifically denies that
15 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
16 information upon which to admit or deny the truth of the additional factual
17 allegations contained in Paragraph 86, and on that basis denies the allegations of said
18 Paragraph.

19
20 87. Defendant lacks any record of any of Defendant's donated goods being
21 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
22 that basis specifically denies such allegation. Defendant specifically denies that
23 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
24 information upon which to admit or deny the truth of the additional factual
25 allegations contained in Paragraph 87, and on that basis denies the allegations of said
26 Paragraph.

1 88. Defendant incorporates by reference its responses to paragraphs 1
2 through 88 above.

3
4 89. Defendant lacks any record of any of Defendant's donated goods being
5 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
6 that basis specifically denies such allegation. Defendant specifically denies that
7 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
8 information upon which to admit or deny the truth of the additional factual
9 allegations contained in Paragraph 89, and on that basis denies the allegations of said
10 Paragraph.

11
12 90. Defendant lacks any record of any of Defendant's donated goods being
13 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
14 that basis specifically denies such allegation. Defendant specifically denies that
15 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
16 information upon which to admit or deny the truth of the additional factual
17 allegations contained in Paragraph 90, and on that basis denies the allegations of said
18 Paragraph.

19
20 91. Defendant lacks any record of any of Defendant's donated goods being
21 distributed or sold by Defendant in the same form as donated by Plaintiffs and on
22 that basis specifically denies such allegation. Defendant specifically denies that
23 Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient
24 information upon which to admit or deny the truth of the additional factual
25 allegations contained in Paragraph 91, and on that basis denies the allegations of said
26 Paragraph.

92. Defendant lacks any record of any of Defendant's donated goods being distributed or sold by Defendant in the same form as donated by Plaintiffs and on that basis specifically denies such allegation. Defendant specifically denies that Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient information upon which to admit or deny the truth of the additional factual allegations contained in Paragraph 92, and on that basis denies the allegations of said Paragraph.

93. Defendant lacks any record of any of Defendant's donated goods being distributed or sold by Defendant in the same form as donated by Plaintiffs and on that basis specifically denies such allegation. Defendant specifically denies that Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient information upon which to admit or deny the truth of the additional factual allegations contained in Paragraph 93, and on that basis denies the allegations of said Paragraph.

94. Defendant lacks any record of any of Defendant's donated goods being distributed or sold by Defendant in the same form as donated by Plaintiffs and on that basis specifically denies such allegation. Defendant specifically denies that Plaintiffs and Defendant had an agreement or contract. Defendant lacks sufficient information upon which to admit or deny the truth of the additional factual allegations contained in Paragraph 94, and on that basis denies the allegations of said Paragraph.

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\\

\\

1 PLAINTIFF’S PRAYER FOR RELIEF

2

3 As to Plaintiffs’ Prayer for Relief, Defendant denies that Plaintiffs are entitled

4 to the relief requested in its prayer against Defendant and specifically denies that

5 Plaintiffs are entitled to any relief whatsoever against Defendant.

6

7

8 AFFIRMATIVE DEFENSES

9

10 As separate and affirmative defenses, Defendant alleges as follows:

11

12 **FIRST AFFIRMATIVE DEFENSE**

13 **(Failure to State a Claim)**

14 1. The Complaint and each and every claim alleged therein fails to state a

15 claim upon which relief may be granted.

16

17 **SECOND AFFIRMATIVE DEFENSE**

18 **(Estoppel)**

19 2. Plaintiffs’ purported causes of action, and each of them, are barred by

20 the doctrine of estoppel due to Plaintiffs’ knowledge and acts, including, but not

21 limited to, sending a myriad of materials in unsecure fashion without any formal

22 agreement and with the understanding spelled out on Defendant’s website that items

23 not used by Defendant would be resold to other recycling companies.

24

25 **THIRD AFFIRMATIVE DEFENSE**

26 **(Waiver)**

27 3. Plaintiffs’ purported causes of action, and each of them, are barred by

28

1 the doctrine of waiver due to Plaintiffs' knowledge and acts, including, but not
 2 limited to, sending a myriad of materials in unsecure fashion without any formal
 3 agreement and with the understanding spelled out on Defendant's website that items
 4 not used by Defendant would be resold to other recycling companies.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 **(Lack of Consideration)**

8 4. Plaintiffs' alleged breach of contract cause of action fails for lack of
 9 consideration.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 **(Lack of Mutuality of Obligation)**

13 5. Plaintiffs' alleged breach of contract cause of action is barred given the
 14 lack of mutuality of obligation.

17 **DEFENDANT'S PRAYER FOR RELIEF**

19 WHEREFORE, Defendant prays for judgment as follows:

21 1. That Plaintiffs take nothing by reason of their Complaint, that judgment
 22 be rendered in favor of Defendant;

24 2. That Defendant be awarded its costs of suit incurred herein, including
 25 reasonable attorneys' fees to the extent permitted by law; and

26 ///

27 ///

1 3. For such other and further relief as the Court deems proper.

2
3 DATED: March 29, 2016

ROSS WERSCHING & WOLCOTT LLP

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5
6 By: /s/ William C. O'Neill
7 WILLIAM C. O'NEILL
8 Attorneys for Defendant
9 PHOENIX FIBERS, INC.

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JURY DEMAND

Defendant hereby demands trial by jury.:

DATED: March 29, 2016

ROSS WERSCHING & WOLCOTT LLP

By: /s/ William C. O'Neill
WILLIAM C. O'NEILL
Attorneys for Defendant
PHOENIX FIBERS, INC.